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May 21, 1975

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ARIZONA ATTORNEY GENERAL

The Honorable James E. Don
Pinal County Attorney
Post Office Box 887
Florence, Arizona 85232

Re: Recall Procedure for Volunteer
Fire Company Officers

Dear Mr. Don:

The following is submitted in reply to the letter of your predecessor, Robert R. Bean, dated March 19, 1975, wherein Mr. Bean asked the following questions:

1. Who orders the recall election of the fire chief or the secretary-treasurer of a volunteer fire company?
2. Who conducts the recall election of a fire chief or secretary-treasurer of a volunteer fire company?
3. What type of election should be ordered, to wit: an election following general election procedures, or a town hall type of election as set out in A.R.S. § 9-1002?

Mr. Bean's letter stated that the recall procedures were initiated pursuant to Article 1, Chapter 2, Title 19, Arizona Revised Statutes, and specifically that the procedures set forth in A.R.S. §§ 19-203, 19-208.02 and 19-207 were followed. We concur in the procedures followed and suggest that, pursuant to A.R.S. § 19-209, the county board of supervisors should order and conduct the recall election and that pursuant to A.R.S. § 19-215, the general election procedures set forth in Title 16, Arizona Revised Statutes, should be followed.

Attorney General Opinion No. 74-27, dated October 17, 1974, recognized that Article 1, Chapter 9, Title 9, Arizona Revised Statutes, inadequately dealt with the election of the chief and secretary-treasurer of volunteer fire companies, stating:

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Noticeably absent from the statutory provisions governing the maintenance of volunteer fire companies are guidelines from the Legislature regarding the calling and conducting of elections for the office of the chief and secretary-treasurer.

Likewise, there are no procedures set forth in Article 1, Chapter 2, Title 19, Arizona Revised Statutes, for the recall of the chief or secretary-treasurer of a volunteer fire company.

A somewhat similar situation was presented to the court in Miller v. Wilson, 59 Ariz. 403, 129 P.2d 668 (1942). In that case the court considered the validity of a recall election of a justice of the peace which was conducted pursuant to the statutory procedures set forth for the recall of county officers, because the statutes failed to set forth the procedures to be followed to recall precinct officers. The court, after quoting from the pertinent portions of Article 8 of the Arizona Constitution and Section 60-202, Laws of 1939, the predecessor of A.R.S. § 19-209, held that the recall provisions of Arizona's Constitution are self-executing and that the recall election was properly conducted. The court stated:

But, says plaintiff, there is a fatal flaw in the method of holding recall elections set forth in the Constitution, in that it directs the election to be called but fails to specify who should call it.

The Constitution itself expressly directs where the recall petition shall be filed. Section 2, article 8, supra. In the case of justices of the peace it is in the office of the clerk of the board of supervisors, and all petitions officially filed with the clerk, which require action, are acted upon by the board of supervisors. Section 55-1003, supra; section 17-307 and section 17-309, subdiv. 22, Arizona Code 1939. We think the reasonable implication of the constitutional provision is that petitions for the calling of a recall election, which by its terms and the statutes are required to be filed with the clerk of the board of supervisors, are to be acted upon by such board.

The question of whether constitutional provisions for the recall of public officers are self-executing has been before the courts of several states. Upon an examination and comparison of our Constitution with these others, and a consideration of its history and the time of its adoption, we think it is very evident that ours was taken from the state of Oregon. The Supreme Court of that state, in State v. Harris, 74 Or. 573, 144 Pac. 109, Ann. Cas. 1916A, 1156, held that its constitutional provision was specifically meant to be self-executing. It is true that there was an express provision in section 18, article 2 of the Oregon Constitution, to the following effect:

"The recall petition shall be filed with the officer with whom a petition for nomination to such office should be filed, and the same officer shall order the special election when it is required." (*italics ours*),

and that while our Constitution provides for filing the recall petition with the officer with whom a nomination petition should be filed, the italicized language above was omitted. We think, however, that this was done rather because it was considered tautological and unnecessary than because it was meant to omit a necessary part of a self-executing constitutional mandate, and that the reasonable implication was that the petition was to be acted upon by defendants.

* * *

Since the constitutional provision, taken in connection with the general election law, provided an adequate procedure for the calling of the recall election in question, and since there is no contention that the procedure thus set forth was not substantially complied with by defendants, it follows that it was their duty to proceed to canvass the result of the election and declare it, and the trial court erred in granting the writ of prohibition.

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In the instant case, A.R.S. § 9-1001 directs the board of supervisors of the county involved to order and conduct the election which determines whether or not a volunteer fire company will be organized. A.R.S. § 9-1001.C specifically provides:

The manner of conducting and voting at the election, contesting the election, keeping the polling lists and canvassing the votes and certifying the returns, shall be the same, as nearly as possible as an election of county officers.

After providing for an election of a chief and secretary-treasurer of a volunteer fire company, A.R.S. § 9-1002 directs the county board of supervisors receiving the certificate which attests to the election of the fire chief and secretary-treasurer to enter its order declaring the volunteer fire company organized and naming the chief and secretary-treasurer. This order is signed by the chairman of the meeting and the clerk of the board of supervisors and is recorded in the office of the county recorder in the book of miscellaneous records.

Although A.R.S. § 9-1002 provides for the election of a volunteer fire chief and the secretary-treasurer it does not, as indicated in Attorney General Opinion 74-27, set forth the procedures to be followed. Conversely, A.R.S. § 9-1001.C specifically directs that the manner of conducting and voting at a volunteer fire company organizational election shall be as nearly as possible the same as in an election of county officers. Although the later section relates to the organization of a volunteer fire company and not the election or the recall election of the officers of the company once it is organized, it provides a good indication of the Legislature's intention that county election procedures should be followed wherever possible. We have therefore harmonized A.R.S. § 9-1001.C and A.R.S. § 9-1002, and thus concluded that the Legislature intended, by its clear declaration in the former section and its silence in the latter section, that the recall of a chief or secretary-treasurer of a volunteer fire company should be conducted pursuant to statutory procedures set forth for the election of county officers. On this basis we then look to Article 1, Chapter 2, Title 19, Arizona Revised Statutes.

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Although A.R.S. § 19-209 was amended by Section 18 of Chapter 159 of the Session Laws of 1973, Section 24 thereof provided:

The provisions of § 18 of this act [amending section 19-209 subject to conditional enactment] and § 19-212, subsection D, Arizona Revised Statutes, shall not become effective until the Constitution of Arizona is amended by vote of the people to provide that recall elections be held as provided by law.

The necessary amendment to Article 8, Part 1, Section 3 of the Arizona Constitution was approved by a majority of the qualified voters at the general election which was held on November 5, 1974. Thereafter the amendment became effective on December 5, 1974, pursuant to a proclamation by the Honorable Jack Williams, Governor. Therefore, A.R.S. § 19-209 as it presently exists provides:

A. If the officer against whom a petition is filed does not resign within five days after the filing as determined pursuant to § 19-208.03, a special recall election shall be ordered to be held not less than one hundred nor more than one hundred twenty days after such order.

B. A recall election shall be called:

1. If for a state office, including a member of the legislature, by the governor.

2. If for a county officer, or judge or other officer of the superior court of a county, then by the board of supervisors of that county.

3. If for a city or town officer, then by the legislative body of the city or town.

4. If for a trustee of a school district, then by the county school superintendent of the county in which the school district is located.

C. If a recall petition is against an officer who is directed by this section to call the election it shall be called:

1. If for a state office, by the secretary of state.

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2. If for a county office, by the clerk of the superior court.

3. If for a city or town office, by the city of town clerk.

Applying the statutory procedures for conducting a recall election of a chief or secretary-treasurer of a volunteer fire company in light of the clear language of A.R.S. § 19-209.B.2 leads us to the conclusion that the board of supervisors should order and conduct the recall election.

A.R.S. § 19-215 provides:

The powers and duties conferred or imposed by law upon boards of election, registration officers, canvassing boards and other public officials who conduct general elections, are conferred and imposed upon similar officers conducting recall elections under the provisions of this article together with the penalties prescribed for the breach thereof.

It is clear that, under the above quoted statutory provision, the general election laws apply to recall elections where not inconsistent therewith. In summary the following constitutional provisions and statutes should govern volunteer fire company recall elections: (1) Article 8, Part 1, Sections 1 through 6 of the Arizona Constitution; (2) A.R.S. § 9-1002 providing for the election but not the recall of a fire chief and secretary-treasurer; (3) A.R.S. § 9-1001.C suggesting legislative intent that county election procedures be followed; and (4) A.R.S. § 19-215 adopting the general election laws for recalls where specific statutory direction is lacking.

If we can be of any further assistance to you in this matter, please do not hesitate to call upon us.

Sincerely,

BRUCE E. BABBITT
The Attorney General

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